

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CRIMINAL NO. 3:03CR63

UNITED STATES OF AMERICA

VS.

FURMAN JONES, JR.

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ORDER

THIS MATTER is before the Court on a filing made by Defendant entitled, "Defendant Submit this Motion to this Honorable Court under Actual Innocence, and Defendant will prove beyond a reasonable doubt that the ends of justice will demand consideration of the merits of claim, and that is a 'Colorable Showing of Factual Innocence'," filed March 9, 2009.

On February 25, 2004, the Defendant pled guilty to Counts One and Three of the indictment charging him with possession with intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a)(1), and the use of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). **See Indictment, filed April 29, 2003; Entry and**

Acceptance of Guilty Plea, filed February 25, 2004. He was sentenced by the undersigned on December 14, 2004, to a total of 180 months imprisonment. **See Judgment in a Criminal Case, filed January 25, 2005.** He filed no direct appeal; therefore, the Judgment was final as of February 8, 2005. Nor did the Defendant file any post-conviction proceedings attacking his conviction and/or sentence within the one-year period of limitation set forth in 28 U.S.C. § 2255(f).

In Defendant's current pleading (hereinafter "Motion"), he alleges, *inter alia*, that the indictment herein was defective, this Court lacked jurisdiction to accept his plea, the use of the 18 U.S.C. § 851 "enhancement" is unconstitutional, his guilty plea was involuntary, and he did not receive effective assistance of counsel. **See generally Defendant's Motion.** These are all issues Defendant could have pursued on direct appeal or in a post-conviction proceeding. Now that the time has expired in which to file these proceedings, this Court is without jurisdiction to consider Defendant's claims.

IT IS, THEREFORE, ORDERED that the relief sought by "Defendant Submit this Motion to this Honorable Court under Actual Innocence, and Defendant will prove beyond a reasonable doubt that the ends of justice

will demand consideration of the merits of claim, and that is a 'Colorable Showing of Factual Innocence'," filed March 9, 2009, is hereby **DENIED**.

Signed: May 18, 2009

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

